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Testimony of Major Brian Scott
130th First Regular Session 2-24-21

IN OPPOSITION TO LD 417 AN ACT TO PROTECT MAINE'S DRIVERS FROM PRETEXTUAL TRAFFIC STOPS

Senator Deschambault, Representative Warren and members of the Joint Standing Committee on Criminal Justice and Public Safety, my name is Major Brian Scott and I am here today to testify on behalf of the Maine State Police and the Department of Public Safety in opposition to LD 417, An Act To Protect Maine's Drivers from Pretextual Traffic Stops.

This bill would preclude an officer from the ability to stop a motor vehicle for a traffic violation if the officer suspected that an occupant in the motor vehicle had committed a crime unrelated to the reason for the traffic stop. Per the bill, any evidence of a crime obtained from that stop would not be able to be used in any criminal proceeding. This bill would have a devastating impact on law enforcement's ability to do their jobs. The result would be a decrease in public safety in Maine by making it more difficult for law enforcement to prevent car crashes and it would prevent officers from halting ongoing criminal activity that they uncover through the course of their work.

This bill would give greater protection to those in Maine who are suspected of criminal activity than the United States or Maine constitutions do. And if enacted, would result in fewer crimes being prosecuted and provide less protection for law abiding citizens who are, or could foreseeably be, victimized.

The United States Supreme Court, in *Whren V. United States* (decided in 1996), determined that as long as an officer has a 'legal' reason to stop the vehicle it is not a violation of the 4th Amendment's prohibition against unreasonable seizures even if the true objective for stopping a motorist was unrelated to the articulated reason for the stop.

An example might be an officer on patrol, at midnight on a holiday weekend, observes a patron leaving a bar and gets behind the wheel of the automobile and drives off. The officer knows that many people leaving a bar at midnight on a weekend have consumed intoxicants, but this scenario falls short of probable cause to believe the operator is impaired. The officer notices that the vehicle has a taillight out and decides to stop the vehicle for that defect. Once stopped the officer observes indicators of impairment of the driver and after the investigation arrests the driver for the suspicion of operating under the influence. Currently, this type of stop plays out over and over again in Maine and is legal, however this bill would make this conduct of the officer illegal. So, instead of the officer being able to remove an impaired operator from the roadway before they endanger others on the road, they would have to wait to develop probable cause to believe the operator was impaired before they could stop the motorist. Waiting may very well result in the operator crossing the centerline and striking another vehicle head on, killing its occupants.

Another example may be an officer working in a high crime area late at night, observes an occupied vehicle sitting in the parking lot of a closed business with no lights on. This area has seen many nighttime commercial burglaries over the past several weeks. As the officer drives into the parking lot to investigate the suspicious activity the operator drives off. As the officer follows the vehicle, he or she sees the vehicle make a right-hand turn without signaling. The officer takes the opportunity to stop the vehicle for failing to signal and during the stop sees burglary tools, dark ski masks and several unopened packages containing expensive electronics. Further investigation reveals that a burglary was in fact just committed at one of the businesses and the officer has established probable cause to arrest the operator for Burglary and Theft. Great job officer! However, if this bill passes the stop and the officer's conduct would be illegal and the evidence obtained as a result of the stop would not be able to be used against the suspect in any criminal proceeding.

Or, an officer receives a report of a domestic violence assault where the suspect had fled the scene in a motor vehicle, but no description of the vehicle has yet been provided. While in route to the residence an officer observes a vehicle speeding down the road and stops the operator for the violation of exceeding the posted speed limit but is also thinking there is a 'possibility' that the operator may be the one fleeing the scene of the domestic assault. Once stopped the officer sees that the operator appears to be extremely nervous, his hands and clothing are covered in blood, he is breathing heavy and is red in the face. Upon investigation the officer determines that this operator is the suspect and was fleeing the residence after beating his spouse leaving her with serious injuries, requiring her hospitalization. The offender admits he committed the assault and the officer arrests the suspect. Under this proposed bill the officer's conduct would be in violation of the law and any evidence obtained as a result of that stop could not be used against the suspect.

Although I could go on and on with many other scenarios that are likely to occur to further demonstrate my concerns over this bill, I will leave you with only one more example. An officer working in an area where there have been cases of human trafficking observes a tractor trailer pull into a truck stop and momentarily stops long enough for a very young woman to get out of the tractor trailer. After hearing the driver yell something out the window the woman jumps back into the tractor trailer and the truck leaves. There may be a reasonable explanation for this incident, such as a parent yelling at their daughter to get back in the truck or it may be that the young lady is in danger and needs immediate police help. The officer follows the tractor trailer and observes the vehicle merge onto I-95 but it fails to yield the right of way to a vehicle already occupying that lane. The officer stops the tractor trailer for the traffic violation of failing to yield to another motorist and later determines that the young lady was in fact kidnapped and is being used in sex trafficking. Once again, the officer's conduct would be illegal, and the suspect would 'walk' free from charges related to the crimes but may be summonsed only for failing to yield.

I am confident that no one here today actually wants any of those things that I just mentioned to happen, but the fact is, that is exactly what this bill would do. I discussed these concerns with the bill's sponsor, Rep. Morales, who assured me that this is not her intent.

For these reasons, I strongly urge the Committee to vote Ought Not to Pass on this bill.

On behalf of the Department of Public Safety and the Maine State Police, I thank you for your time and would be happy to try and answer any questions that you might have.